

COMMERCE AND NAVIGATION

Treaty signed at Naples December 1, 1845

Entered into force December 1, 1845

Ratified by the Two Sicilies February 28, 1846

Senate advice and consent to ratification April 11, 1846

Ratified by the President of the United States April 14, 1846

Ratifications exchanged at Naples June 1, 1846

Proclaimed by the President of the United States July 24, 1846

*Superseded November 7, 1856, by treaty of October 1, 1855*¹

9 Stat. 833; Treaty Series 363²

The United States of America and His Majesty the King of the Kingdom of the Two Sicilies, equally animated with the desire of maintaining, the relations of good understanding which have hitherto so happily subsisted between their respective States, and consolidating the commercial intercourse between them have agreed to enter in negotiations for the conclusion of a Treaty of commerce and navigation, for which purpose they have appointed Plenipotentiaries, that is to say:

The President of the United States of America

William H. Polk, Chargé d'Affaires of the same United States of America to the Court of His Majesty the King of the Kingdom of the Two Sicilies

And His Majesty the King of the Kingdom of the Two Sicilies

D. Giustino Fortunato, Knight Grand Cross of the Royal Military Constantinian Order of S^t George, and of Francis the 1st, Minister Secretari of State of His said Majesty.

D. Michael Gravina and Requesenz, Prince of Comitini, Knight Grand Cross of the Royal Order of Francis the 1st, Gentleman of the chamber in waiting, and Minister Secretary of State of His said Majesty.

And D. Antonio Spinelli, of Scalea, Commander of the R^l Order of Francis the 1st, Gentleman of the chamber of His said Majesty, Member of the General Consulta and Surintendant General of the Archives of the Kingdom.

¹ TS 365, *post*, p. 1193.

² For a detailed study of this treaty, see 4 Miller 791.

Who after having each others exchanged their full powers, found in good and due form, have concluded and signed the following Articles:

ARTICLE 1

There shall be reciprocal liberty of commerce and navigation between the United States of America and the Kingdom of the Two Sicilies.

No duty of customs or other impost shall be charged upon any goods, the produce or manufacture of one Country, upon importation by sea or by land from such Country into the other, other or higher than the duty or impost charged upon goods of the same kind, the produce or manufacture of, or imported from, any other country: and the United States of America and His Majesty the King of the Kindom of the Two Sicilies, do hereby engage, that the subjects or citizens of any other State, shall not enjoy any favour privilege or immunity whatever in matters of commerce and navigation which shall not, also, and at the same time be extended to the subjects or citizens of the other High contracting Party, gratuitously, if the concession in favour of that other State shall have been gratuitous, and in return for a compensation, as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concessions shall have been conditional.

ARTICLE 2

All articles of the produce or manufacture of either country, and of their respective States, which can legally be imported into either country from the other in ships of that other country and thence coming, shall, when so imported, be subject to the same duties, and enjoy the same privileges whether imported in ships of the one country, or in ships of the other; and in like manner, all goods which can legally be exported or reexported from either country to the other, in ships of that other country, shall, when so exported or reexported be subject to the same duties, and be entitled to the same privileges, drawbacks, bounties and allowances, whether exported in ships of the one country, or in ships of the other.

ARTICLE 3

No duties of tonnage, harbour, light-houses, pilotage, quarantine, or other similar duties, of whatever nature, or under whatever denomination, shall be imposed in either country upon the vessels of the other, in respect of voyages between the United States of America and the Kingdom of the Two Sicilies, if laden, or in respect of any voyage, if in ballast, which shall not be equally imposed in the like cases on national vessels.

ARTICLE 4

It is hereby declared that the stipulations of the present Treaty, are not to be understood as applying to the navigation and carrying trade between one port and another situated in the States of either contracting party, such navigation and trade being reserved exclusively to national vessels. Vessels of either country shall, however, be permitted to load or unload the whole or part of their cargoes at one or more ports in the States of either of the High contracting parties, and then to proceed to complete the said loading or unloading to any other port or ports in the same States.

ARTICLE 5

Neither of the Two Governments nor any corporation or agent acting in behalf, or under the authority of either Government, shall, in the purchase of any article, which being the growth, produce or manufacture of the one country, shall be imported into the other, give directly or indirectly any priority or preference on account of or in reference to, the national character of the vessel in which such article shall have been imported; it being the true intent and meaning of the High contracting parties, that no distinction or difference whatever shall be made in this respect.

ARTICLE 6

The High contracting Parties engage, in regard to the personal privileges that the citizens of the United States of America shall enjoy in the Dominions of His Majesty the King of the Kingdom of the Two Sicilies, and the subjects of His said Majesty in the United States of America, that they shall have free and undoubted right to travel and to reside in the States of the Two High contracting Parties, subject to the same precautions of Police, which are practiced towards the subjects or citizens of the most favoured Nations.

They shall be entitled to occupy dwellings, and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, will, or in any other way whatever, without the smallest hindrance or obstacle; and their heirs, or representatives, being subjects or citizens of the other High contracting Party, shall succeed to their personal goods whether by Testament or *ab intestato*; and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same at will, paying to the profit of the respective governments, such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the Heir and representative, such care shall be taken of the said goods, as would be taken of the goods of a native of the same country in like case, until the lawful owner, may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided, finally, by the laws and judges of the land wherein the said goods are.

They shall not be obliged to pay under any pretence whatever, any taxes or impositions, other or greater than those which are paid, or may hereafter be paid by the subjects or citizens of the most favoured Nations in the respective States, of the High contracting parties.

They shall be exempt from all military service whether by land or by sea, from forced loans, and from every extraordinary contribution not general and by law established. Their dwellings, warehouses and all premises appertaining thereto, destined for purposes of commerce or residence shall be respected. No arbitrary search of, or visit to their houses, and no arbitrary examination or inspection whatever of the books, papers or accounts of their trade shall be made; but such measures shall be executed only in conformity with the legal sentence of a competent tribunal, and each of the Two High contracting Parties engages, that the citizens or subjects of the other residing in their respective States, shall enjoy their property and personal security, in as full and ample manner, as their own citizens or subjects, or the subjects or citizens of the most favoured Nations.

ARTICLE 7

The citizens and the subjects of each of the Two High contracting Parties, shall be free in the States of the other, to manage their own affairs themselves, or to commit those affairs, to the management of any persons whom they may appoint as their broker, factor or agent, nor shall the citizens and subjects of the Two High contracting Parties, be restrained in their choice of persons, to act in such capacities, nor shall they be called upon to pay any salary, or remuneration to any person, whom they shall not choose to employ.

Absolute freedom shall be given in all cases to the buyer and seller to bargain together, and to fix the price of any goods, or merchandize imported into, or to be exported from the States and Dominions of the Two High contracting Parties; save and except generally such cases wherein the Laws and usages of the country, may require the intervention of any special agents, in the States and Dominions, of the High contracting Parties.

ARTICLE 8

Each of the Two High contracting Parties, may have in the ports of the other, Consuls, Vice Consuls and Commercial Agents, of their own appointment, who shall enjoy the same privileges, and powers of those of the most favored Nations, but if any such Consuls shall exercise commerce, they shall be submitted to the same Laws and usages, to which the private individuals of their nation are submitted in the same place.

The said Consuls, Vice Consuls and Commercial Agents are authorized to require the assistance of the local Authorities for the search, arrest, detention and imprisonment of the deserters from the ships of war, and merchant vessels of their country. For this purpose they shall apply to the competent

Tribunals, judges and officers, and shall in writing demand the said deserters, proving by the exhibition of the registres of the vessel, the rolls of the crews, or by other official documents that such individuals formed part of the crews, and this reclamation being thus substantiated, the surrender shall not be refused.

Such deserters when arrested shall be placed at the disposal of the said Consuls, Vice Consuls or Commercial Agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessels to which they belonged, or sent back to their own country, by a vessel of the same nation, or any other vessel, whatsoever. But if not sent back within four months from the day of their arrest, or if all the expenses of such imprisonment are not defrayed, by the party causing such arrest and imprisonment they shall be set at liberty, and shall not be again arrested for the same cause.

However if the deserter should be found to have committed any crime or offence, his surrender may be delayed until the Tribunal before which his case shall be depending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE 9

If any ships of war or merchant vessels be wrecked on the coasts of the States of either of the High contracting parties, such ships or vessels, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandize which shall be saved therefrom, or the produce thereof, if sold shall be faithfully restored, with the least possible delay, to the proprietors upon being claimed by them, or by their duly authorized factors; and if there are no such proprietors or factors on the spot, then the said goods and merchandize, or the proceeds thereof as well as all the papers found on board such wrecked ships or vessels, shall be delivered to the American or Sicilian Consul or Vice Consul, in whose district the wreck may have taken place; and such Consul, Vice Consul, proprietors, or factors, shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage and expenses of quarantine which would have been payable in the like case of a wreck of a national vessel; and the goods and merchandize saved from the wreck, shall not be subject to duties, unless cleared for consumption; it being understood, that in case of any legal claim upon such wreck, goods or merchandize, the same shall be referred for decision to the competent tribunals of the Country.

ARTICLE 10

The merchant vessels of each of the Two High contracting Parties, which may be forced by stress of weather or other cause into one of the Ports of the other, shall be exempt from all duty of port or navigation

paid for the benefit of the State, if the motives which led to take refuge be real and evident, and if no operation of commerce be done by loading or unloading merchandises; well understood however that the loading or unloading, which may regard the subsistence of the crew, or necessary for the reparation of the vessel, shall not be considered operations of commerce, which lead to the payment of duties, and that the said vessels do not stay in Port beyond the time necessary, keeping in view the cause which led [to] taking refuge.

ARTICLE 11

To carry always more fully into effect the intentions of the Two High contracting parties, they agree, that every difference of duty, whether of the ten per cent or other, established in the respective States, to the prejudice of the navigation and commerce of those Nations which have not treaties of Commerce and Navigation with them, shall cease and remain abolished in conformity to the principle established in the 1st Article of the present Treaty, as well on the productions of the soil and industry of the Kingdom of the Two Sicilies, which therefrom shall be imported in the United States of America, whether in vessels of the one, or of the other country, as on those, which in like manner, shall be imported in the Kingdom of the Two Sicilies in vessels of both countries.

They declare besides, that as the productions of the soil and industry of the Two countries, on their introduction in the ports of the other, shall not be subject to greater duties than those which shall be imposed on the like productions of the most favoured Nations, so the red and white wines of the Kingdom of the Two Sicilies of every kind, including those of Marsala, which may be imported directly into the United States of America, whether in vessels of the one or of the other country, shall not pay higher or greater duties than those of the red and white wines of the most favoured Nations. And in like manner, the Cottons of the United States of America, which may be imported directly in the Kingdom of the Two Sicilies, whether in vessels of the one or other Nation, shall not pay higher or greater duties, than the Cottons of Egypt, Bengal, or those of the most favoured Nations.

ARTICLE 12

The present Treaty shall be in force from this day, and for the term of ten years, and further, until the end of twelve months after either of the High contracting Parties shall have given notice to the other, of its intention to terminate the same; each of the said High contracting Parties, reserving to itself the right of giving such notice, at the end of the said term of ten years, or at any subsequent term.

ARTICLE 13

The present Treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by His Majesty the King of the Kingdom of the Two Sicilies, and the ratifications shall be exchanged at Naples, at the expiration of six months from the date of its signature, or sooner, if possible

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Naples the first of December in the year one thousand eight hundred and forty five.

WILLIAM H. POLK [SEAL]

GIUSTINO FORTUNATO [SEAL]

IL PRINCIPE DI COMITINI [SEAL]

ANTONIO SPINELLI [SEAL]